

VIA ELECTRIC FILING

November 23rd, 2020

Marlene H. Dortch
Secretary
Federal Communications Commission
Washington, DC 20554

Re: *Transforming the 2.5 GHz Band*, WT Docket No. 18-120 WRITTEN EX PARTE
COMMUNICATION

Dear Ms. Dortch:

In April of 2020, the FCC made significant changes to the Educational Broadband Service (EBS) band by implementing rules which were adopted in its July 2019 Report and Order¹. Most notably the rules have enabled 2.5 GHz licensees with the ability to further commercialize their spectrum assets by removing the educational requirements previously associated with the band. With this new flexibility, Select Spectrum, in its role as a licensed spectrum brokerage that has supported transactions in the secondary market for over a decade, has been able to facilitate an increased number of transactions while also delivering contract terms that more closely match individual licensees' preferences. As a result of the recent rule changes, this newly enabled flexibility has indeed supported the FCC's goal of "promoting more efficient use of the spectrum and improving the industry's ability to attract capital".²

In addition to the commercialization and removal of the educational components of the EBS band, the FCC also announced their plan to auction "any remaining unassigned EBS spectrum"³, after the Tribal filing window closes. In consideration of the Commission's intention to find the most "efficient and intensive"⁴ and "highest and best use for EBS spectrum", which would result in "development and rapid deployment of new services for the benefit of the public", we strongly recommend that the Commission implement a single round, sealed bid process for the auction format.

Based on our management team's 10+ years' experience advising clients regarding 2.5 GHz EBS spectrum transactions and additional experience in the FCC's Auction 103 and 105, Select Spectrum believes that a single round, sealed bid approach will yield an increased and diverse participation of private operators and parties other than the single national carrier that has

¹ See *Transforming the 2.5 GHz Band*, Report and Order

² See *Transforming the 2.5 GHz Band*, Report and Order, Eliminating Eligibility Restrictions, para. 15

³ See *Transforming the 2.5 GHz Band*, Report and Order, Auction of EBS White Space Licenses, para. 75

⁴ See *Transforming the 2.5 GHz Band*, Report and Order, Applicability of Part 1 Competitive Bidding Rules, para. 87

dominated leasing activity in the band to acquire valuable spectrum. As history shows, these parties will promptly deploy systems and provide services in the primarily rural areas of the country slated for inclusion in the auction. These rural areas generally have no or limited existing networks. In most such areas T-Mobile's predecessor company, Sprint, has held 2.5 GHz BRS spectrum for many years, but with a business model based on mobile wireless services the company has not found it economically feasible to construct and operate networks. Conversely the approximately 70+ other companies holding or leasing EBS/BRS licenses have typically built and operated mobile or Fixed Wireless Access (FWA) networks promptly to provide fixed wireless internet access and other services in rural areas which have a significant need for such enhanced network infrastructure. The FCC should seek to expand the availability of EBS licenses to this diverse group of operators, which will result in improved connectivity for the constituents of such communities.

Should the Commission choose to follow a typical auction regime (e.g., a Simultaneous Multi-Round ("SMR") auction), Select Spectrum believes that T-Mobile, which already has access to the vast majority of the licensed 2.5 GHz (EBS and BRS) spectrum in the U.S., will seek to outbid smaller operators simply to gain ownership of the spectrum while having no near-term intention of deploying the spectrum to its best and full capability, especially in more rural markets.

If the Commission were to adopt a SMR auction, we expect the results will be disappointing in both revenue collected and diversity of buyers. The disappointing past example of this approach is Auction 86 for BRS (2.5 GHz) licenses where the gross bids were only \$20.7M. We expect that:

1. T-Mobile will bid widely at opening prices and outbid competitors in most of the minority of cases where competitors chose to bid.
2. Because so many of the licenses are heavily encumbered by licenses that T-Mobile either owns or leases, there will be no competition to T-Mobile for many of the overlay licenses being offered. In the minority of the licenses where there is competition, T-Mobile will be able to leverage the financial advantage it gains from securing so many licenses at low cost to outbid smaller competitors that are not able to dollar cost average.
3. And of the few small operators that are willing to compete in a multi-round auction with Sprint, only a few will win a small number of licenses at a price near the highest of what T-Mobile will be willing to pay.

For smaller operators that have interest in using this spectrum to produce benefits for rural communities, for the residents of those communities and for the FCC's goals of increasing service in rural areas and for the Treasury, Select Spectrum believes a much better process will be to allow sealed bids. Smaller bidders can pick a price near what each license is worth to them, and then know that they won't be stretched through multiple rounds only to lose to a multinational carrier with a significant advantage due to its holding of encumbering licenses. T-Mobile will not know in advance where they face competition and will be forced with a choice of bidding higher on a wide scale (good for the Treasury), or risking losing many licenses to smaller operators.

Understandably, following their business models, national carriers prioritize populous metro markets in comparison to rural markets and as such it could be several years until this particular

spectrum is used to develop a network to its “highest and best use” in such rural areas. “Highest and best use” has sometimes been defined as simply the highest ability and willingness to pay; However, given the unique aspects of the proposed 2.5 GHz EBS auction, with licenses primarily being rural in nature, it is our view that an auction favoring one nationwide carrier would conflict with the mandates of being “efficient and intensive” and being conducive to “development and rapid deployment of new services for the benefit of the public”.

We believe that a single round, sealed bid approach will not only be the most reasonable and fair way to issue licenses to auction participants, but it is also the best structure to ensure the spectrum will have the “highest and best use” in rural areas through small operators having a fair shot at spectrum access. A single round, sealed bid approach will provide this opportunity by eliminating T-Mobile’s opportunity to use dollar cost averaging to pay above its own valuation and beat out smaller operators in those markets where there is competition. Moreover, a single round, sealed bid approach necessitates a need for knowledge of the local landscape (i.e. the county or sub-county area being bid on) to price the spectrum and bid accurately. This will deter frivolous bidding by larger entities without ties to the local rural communities in question, which would otherwise simply seek to outbid small operators with price knowledge of the market areas.

As such, a single round, sealed bid approach will increase, accelerate and make possible the development and availability of satisfactory connectivity in rural areas that currently are subject to the Digital Divide and Homework Gap. This is mainly because smaller operators’ (e.g., WISPs, regional carriers, electric co-ops, etc.) business models will provide a higher level of deployment and use of the spectrum above and beyond substantial service, while providing internet access via FWA deployments to constituents that are otherwise underserved or unserved.

At a time when the nation is increasingly reliant on satisfactory connectivity in rural and urban areas alike, we hope the Commission seriously considers the comments made above.

Pursuant to Section 1.1206 of the Commission’s rules, this letter is being electronically filed in the Electronic Comment Filing System. Please do not hesitate to contact the undersigned with any questions.

Respectfully,

/s/ Robert Finch

Robert Finch

President, Select Spectrum

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